

CHAPTER 198**(SB 83)**

AN ACT relating to athletics.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔Section 1. KRS 156.070 is amended to read as follows:

- (1) The Kentucky Board of Education shall have the management and control of the common schools and all programs operated in these schools, including interscholastic athletics, the Kentucky School for the Deaf, the Kentucky School for the Blind, and community education programs and services.
- (2) The Kentucky Board of Education may designate an organization or agency to manage interscholastic athletics in the common schools, provided that the rules, regulations, and bylaws of any organization or agency so designated shall be approved by the board, and provided further that any administrative hearing conducted by the designated managing organization or agency shall be conducted in accordance with KRS Chapter 13B.
 - (a) The state board or its designated agency shall assure through promulgation of administrative regulations that if a secondary school sponsors or intends to sponsor an athletic activity or sport that is similar to a sport for which National Collegiate Athletic Association members offer an athletic scholarship, the school shall sponsor the athletic activity or sport for which a scholarship is offered. The administrative regulations shall specify which athletic activities are similar to sports for which National Collegiate Athletic Association members offer scholarships.
 - (b) Beginning with the 2003-2004 school year, the state board shall require any agency or organization designated by the state board to manage interscholastic athletics to adopt bylaws that establish as members of the agency's or organization's board of control one (1) representative of nonpublic member schools who is elected by the nonpublic school members of the agency or organization from regions one (1) through eight (8) and one (1) representative of nonpublic member schools who is elected by the nonpublic member schools of the agency or organization from regions nine (9) through sixteen (16). The nonpublic school representatives on the board of control shall not be from classification A1 or D1 schools. Following initial election of these nonpublic school representatives to the agency's or organization's board of control, terms of the nonpublic school representatives shall be staggered so that only one (1) nonpublic school member is elected in each even-numbered year.
 - (c) The state board or any agency designated by the state board to manage interscholastic athletics shall not promulgate rules, administrative regulations, or bylaws that prohibit pupils in grades seven (7) to eight (8) from participating in any high school sports except for high school varsity soccer and football, or from participating on more than one (1) school-sponsored team at the same time in the same sport. The Kentucky Board of Education, or an agency designated by the board to manage interscholastic athletics, may promulgate administrative regulations restricting, limiting, or prohibiting participation in high school varsity soccer and football for students who have not successfully completed the eighth grade.
 - (d)
 1. The state board or any agency designated by the state board to manage interscholastic athletics shall allow a member school's team or students to play against students of a non-member at-home private school, or a team of students from non-member at-home private schools, if the non-member at-home private schools and students comply with this subsection.
 2. A non-member at-home private school's team and students shall comply with the rules for student athletes, including rules concerning:
 - a. Age;
 - b. School semesters;
 - c. Scholarships;
 - d. Physical exams;
 - e. Foreign student eligibility; and
 - f. Amateurs.

3. A coach of a non-member at-home private school's team shall comply with the rules concerning certification of member school coaches as required by the state board or any agency designated by the state board to manage interscholastic athletics.
 4. This subsection shall not allow a non-member at-home private school's team to participate in a sanctioned:
 - a. Conference;
 - b. Conference tournament;
 - c. District tournament;
 - d. Regional tournament; or
 - e. State tournament or event.
 5. This subsection does not allow eligibility for a recognition, award, or championship sponsored by the state board or any agency designated by the state board to manage interscholastic athletics.
 6. A non-member at-home private school's team or students may participate in interscholastic athletics permitted, offered, or sponsored by the state board or any agency designated by the state board to manage interscholastic athletics.
- (e) Every local board of education shall require an annual medical examination performed and signed by a physician, physician assistant, advanced practice registered nurse, or chiropractor, if performed within the professional's scope of practice, for each student seeking eligibility to participate in any school athletic activity or sport. The Kentucky Board of Education or any organization or agency designated by the state board to manage interscholastic athletics shall not promulgate administrative regulations or adopt any policies or bylaws that are contrary to the provisions of this paragraph.
- (f) Any student who turns nineteen (19) years of age prior to August 1 shall not be eligible for high school athletics in Kentucky. Any student who turns nineteen (19) years of age on or after August 1 shall remain eligible for that school year only. An exception to the provisions of this paragraph shall be made, and the student shall be eligible for high school athletics in Kentucky if the student:
1. Qualified for exceptional children services and had an individual education program developed by an admissions and release committee (ARC) while the student was enrolled in the primary school program;
 2. Was retained in the primary school program because of an ARC committee recommendation; and
 3. Has not completed four (4) consecutive years or eight (8) consecutive semesters of eligibility following initial promotion from grade eight (8) to grade nine (9).
- (g) ***The state board or any agency designated by the state board to manage interscholastic athletics shall promulgate administrative regulations or bylaws that provide that:***
1. ***A member school shall designate all athletic teams, activities, and sports for students in grades six (6) through twelve (12) as one (1) of the following categories:***
 - a. ***"Boys";***
 - b. ***"Coed"; or***
 - c. ***"Girls";***
 2. ***The sex of a student for the purpose of determining eligibility to participate in an athletic activity or sport shall be determined by:***
 - a. ***A student's biological sex as indicated on the student's original, unedited birth certificate issued at the time of birth; or***
 - b. ***An affidavit signed and sworn to by the physician, physician assistant, advanced practice registered nurse, or chiropractor that conducted the annual medical examination required by paragraph (e) of this subsection under penalty of perjury establishing the student's biological sex at the time of birth;***

3.
 - a. *An athletic activity or sport designated as "girls" for students in grades six (6) through twelve (12) shall not be open to members of the male sex.*
 - b. *Nothing in this section shall be construed to restrict the eligibility of any student to participate in an athletic activity or sport designated as "boys" or "coed"; and*
 4. *Neither the state board, nor any agency designated by the state board to manage interscholastic athletics, nor any school district, nor any member school shall entertain a complaint, open an investigation, or take any other adverse action against a school for maintaining separate interscholastic or intramural athletic teams, activities, or sports for students of the female sex.*
- (h) 1. The state board or any agency designated by the state board to manage interscholastic athletics shall promulgate administrative regulations that permit a school district to employ or assign nonteaching or noncertified personnel or personnel without postsecondary education credit hours to serve in a coaching position. The administrative regulations shall give preference to the hiring or assignment of certified personnel in coaching positions.
2. A person employed in a coaching position shall be a high school graduate and at least twenty-one (21) years of age and shall submit to a criminal background check in accordance with KRS 160.380.
3. The administrative regulations shall specify post-hire requirements for persons employed in coaching positions.
4. The regulations shall permit a predetermined number of hours of professional development training approved by the state board or its designated agency to be used in lieu of postsecondary education credit hour requirements.
5. A local school board may specify post-hire requirements for personnel employed in coaching positions in addition to those specified in subparagraph 3. of this paragraph.
- (i) ~~(h)~~ Any student who transfers enrollment from a district of residence to a nonresident district under KRS 157.350(4)(b) shall be ineligible to participate in interscholastic athletics for one (1) calendar year from the date of the transfer.
- (3) (a) The Kentucky Board of Education is hereby authorized to lease from the State Property and Buildings Commission, or others, whether public or private, any lands, buildings, structures, installations, and facilities suitable for use in establishing and furthering television and related facilities as an aid or supplement to classroom instruction, throughout the Commonwealth, and for incidental use in any other proper public functions. The lease may be for any initial term commencing with the date of the lease and ending with the next ensuing June 30, which is the close of the then-current fiscal biennium of the Commonwealth, with exclusive options in favor of the board to renew the same for successive ensuing bienniums, July 1 in each even year to June 30 in the next ensuing even year; and the rentals may be fixed at the sums in each biennium, if renewed, sufficient to enable the State Property and Buildings Commission to pay therefrom the maturing principal of and interest on, and provide reserves for, any revenue bonds which the State Property and Buildings Commission may determine to be necessary and sufficient, in agreement with the board, to provide the cost of acquiring the television and related facilities, with appurtenances, and costs as may be incident to the issuance of the bonds.
- (b) Each option of the Kentucky Board of Education to renew the lease for a succeeding biennial term may be exercised at any time after the adjournment of the session of the General Assembly at which appropriations shall have been made for the operation of the state government for such succeeding biennial term, by notifying the State Property and Buildings Commission in writing, signed by the chief state school officer, and delivered to the secretary of the Finance and Administration Cabinet as a member of the commission. The option shall be deemed automatically exercised, and the lease automatically renewed for the succeeding biennium, effective on the first day thereof, unless a written notice of the board's election not to renew shall have been delivered in the office of the secretary of the Finance and Administration Cabinet before the close of business on the last working day in April immediately preceding the beginning of the succeeding biennium.
- (c) The Kentucky Board of Education shall not itself operate leased television facilities, or undertake the preparation of the educational presentations or films to be transmitted thereby, but may enter into one

(1) or more contracts to provide therefor, with any public agency and instrumentality of the Commonwealth having, or able to provide, a staff with proper technical qualifications, upon which agency and instrumentality the board, through the chief state school officer and the Department of Education, is represented in such manner as to coordinate matters of curriculum with the curricula prescribed for the public schools of the Commonwealth. Any contract for the operation of the leased television or related facilities may permit limited and special uses of the television or related facilities for other programs in the public interest, subject to the reasonable terms and conditions as the board and the operating agency and instrumentality may agree upon; but any contract shall affirmatively forbid the use of the television or related facilities, at any time or in any manner, in the dissemination of political propaganda or in furtherance of the interest of any political party or candidate for public office, or for commercial advertising. No lease between the board and the State Property and Buildings Commission shall bind the board to pay rentals for more than one (1) fiscal biennium at a time, subject to the aforesaid renewal options. The board may receive and may apply to rental payments under any lease and to the cost of providing for the operation of the television or related facilities not only appropriations which may be made to it from state funds, from time to time, but also contributions, gifts, matching funds, devises, and bequests from any source, whether federal or state, and whether public or private, so long as the same are not conditioned upon any improper use of the television or related facilities in a manner inconsistent with the provisions of this subsection.

- (4) The state board may, on the recommendation and with the advice of the chief state school officer, prescribe, print, publish, and distribute at public expense such administrative regulations, courses of study, curriculums, bulletins, programs, outlines, reports, and placards as each deems necessary for the efficient management, control, and operation of the schools and programs under its jurisdiction. All administrative regulations published or distributed by the board shall be enclosed in a booklet or binder on which the words "informational copy" shall be clearly stamped or printed.
- (5) Upon the recommendation of the chief state school officer or his or her designee, the state board shall establish policy or act on all matters relating to programs, services, publications, capital construction and facility renovation, equipment, litigation, contracts, budgets, and all other matters which are the administrative responsibility of the Department of Education.

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 164 IS CREATED TO READ AS FOLLOWS:

- (1) (a) *A public postsecondary education institution or private postsecondary education institution that is a member of a national intercollegiate athletic association shall designate all intercollegiate and intramural athletic teams, activities, sports, and events that are sponsored or authorized by the institution as one (1) of the following categories:*
 - 1. "Mens";
 - 2. "Coed"; or
 - 3. "Womens."
- (b) 1. *A public postsecondary education institution or private postsecondary education institution that is a member of a national intercollegiate athletic association shall prohibit a member of the male sex from competing in any intercollegiate or intramural athletic team, activity, sport, or event designated as "womens."*
- 2. *Nothing in this section shall be construed to restrict the eligibility of any student to participate in an athletic activity or sport designated as "mens" or "coed."*
- (2) *The sex of a student for the purpose of determining eligibility to participate in an athletic activity or sport or to use an athletic facility designated for the exclusive use of a single sex shall be determined by:*
 - (a) *A student's biological sex as indicated on the student's original, unedited birth certificate issued at the time of birth; or*
 - (b) *An affidavit signed and sworn to by a physician, physician assistant, advanced practice registered nurse, or chiropractor under penalty of perjury establishing the student's biological sex at the time of birth.*
- (3) *A government entity, licensing or accrediting organization, or athletic association or organization shall not entertain a complaint, open an investigation, or take any other adverse action against a postsecondary*

education institution for maintaining a separate interscholastic or intramural athletic team, activity, sport, or event for members of the female sex.

➔ Section 3. This Act may be cited as the "Fairness in Womens' Sports Act."

Veto Overridden and Signed by Secretary of State April 13, 2022.